



The Rights of Pregnant and Parenting Students and Employees

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Pregnant & Parenting Students



Problems Pregnant and Parenting Teens Experience



- Stigmatizing behavior in the classroom.
- Prevented from taking the courses necessary to apply to many four year colleges.
- Restricted from school activities.
- Denied a secure and private place to breastfeed or pump milk.
- Pushed out of their regular schools and into continuation schools.

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Consequences of Unlawful Pregnancy/Parental Status Discrimination

- High drop-out rate
- Low probability of earning a college degree
- Decreased opportunity to be hired for higher paying jobs
- High probability of welfare dependence
- Perpetual cycle of poverty



+ Title IX and California Law

- Title IX regulations prohibit discrimination against a student based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions.
- Schools cannot exclude pregnant students from participating in any educational program, including sports, honor societies, or extracurricular activities.
- Schools *can* have special instructional programs or classes for pregnant students but they must be voluntary and they must be comparable to those offered to other students

Sources: 34 C.F.R. § 106.40; U.S. Department of Education, Office for Civil Rights, *Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972* (2013)

+ Title IX and California Law

- Schools must provide reasonable accommodations to pregnant students.
- Any special services provided to students who have temporary medical conditions must also be provided to pregnant students.
- A school can require a pregnant student to submit medical certification only if it also requires the same of all students under a doctor's care.
- Schools must be very careful about confidentiality of pregnancy information: protected under Constitution, HIPPA, & CA laws.

Sources: 34 C.F.R. § 106.40; U.S. Department of Education, Office for Civil Rights, *Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972* (2013)

+ Title IX and California Law

- CA law provides pregnant & parenting teens these same protections:
 - **California Sex Equity in Education Act:** Can't apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex.
 - **Unruh Civil Rights Act:** Business establishments, which includes schools, can't discriminate based on sex. "Sex" includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth.



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Lactation Accommodations

+ Stories



I had to pump at all hours of the night and early in the morning before school so that I could have enough milk for my baby and so that I wouldn't have to pump at school.

But even when I was at school, I still had to pump every two hours or often try to deal with the pain. Sometimes, the pain was so unbearable that I had no other choice but to walk into the public restroom and go into the stall to pump.

I eventually stopped producing the same amount of milk. My inability to feed or pump milk while at school ended up affecting my child's access to my milk at home.





Lactation Accommodation Law



Title IX & CA Law:

- If a school provides reasonable accommodations to students with temporary medical conditions, must do the same for breastfeeding students.
- Accommodations must be made for breastfeeding employees, who are also protected from any retaliation for taking breaks to breastfeed and pump.
- Treating lactating student, employee, or parent/guardian differently or denying reasonable accommodations is sex discrimination.

For more information about discrimination and accommodations laws for pregnant students and employees in schools, see: <https://www.aclusocal.org/wp-content/uploads/2015/10/BFLA-School-District-Laws.pdf>.



Lactation Accommodation Law



TITLE IX Coordinator

Schools must also:

- Designate at least one person to be their Title IX Coordinator
- Notify students how to contact their Title IX Coordinator
- Adopt and publish grievance procedures to be followed if a Title IX issue arises.



Lactation Accommodation Law

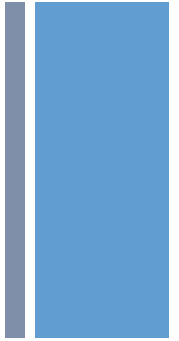


- AB 302: Effective **January 1, 2016**
- All public or charter schools with *at least one student* who is lactating must:
 - Provide a **private, secure room**—other than a restroom—to deal with any needs associated with breastfeeding or expressing milk
 - Allow lactating students to bring **any equipment** used to express breast milk to school, including a breast pump
 - Provide **access to a power source** for that equipment
 - Provide a **place to safely store** expressed milk

Sources: 29 U.S.C. § 207(r); Cal. Educ. Code § 222; Cal. Labor Code §§ 1030-31; ACLU of Cal., BreastfeedLA & Cal. Women's Law Center, *ABC's of Breastfeeding in Los Angeles County School Districts* (2015)



Lactation Accommodation Law



- ✓ Provide students with **reasonable time or time away** from the classroom to accommodate their lactation schedule
- ✓ Ensure students **do not incur an academic penalty** for any such breaks they may require
- ✓ Ensure students have the **ability to make up** any work missed during these breaks

Sources: 29 U.S.C. § 207(r); Cal. Educ. Code § 222; Cal. Labor Code §§ 1030-31; ACLU of Cal., BreastfeedLA & Cal. Women's Law Center, *ABC's of Breastfeeding in Los Angeles County School Districts* (2015)



Lactation Accommodation Process



- Title IX and CA Uniform Complaint Procedures available
- Accept and investigate complaints of noncompliance under the **Uniform Complaint Procedure**, which requires schools to investigate complaints and issue a decision within 60 school days
- Decisions may be appealed to CDE, which must issue a final, written decision within 60 days of filing

Sources: Cal. Educ. Code § 222; BreastfeedLA & Cal. Women's Law Center, *ABC's of Breastfeeding in Los Angeles County School Districts* (2015)

+ Public Breastfeeding



- People have a right to breastfeed in public and in government buildings.
- CWLC and BFLA have received many complaints from parents told they cannot breastfeed on school grounds during school events and teacher conferences.

Sources: Cal. Civil Code § 43.3.



A B C's of Breastfeeding
in Los Angeles County School Districts



ABC's of Breastfeeding in Los Angeles County School Districts

*ACLU of SoCal, BreastfeedLA and
California Women's Law Center*

<http://breastfeedla.org/schooldistricts/>



ABC's of Breastfeeding: Method



All 81 LA County School Districts and over 100 LA universities and colleges were evaluated on the same five criteria:

1. Are the school board policies available online?
2. Does the school district have an employee lactation accommodations policy?
3. Does the school district have a pregnant and parenting student policy?
4. Does the school district student policy include lactation accommodations?
5. Can the Title IX Coordinator be easily identified?

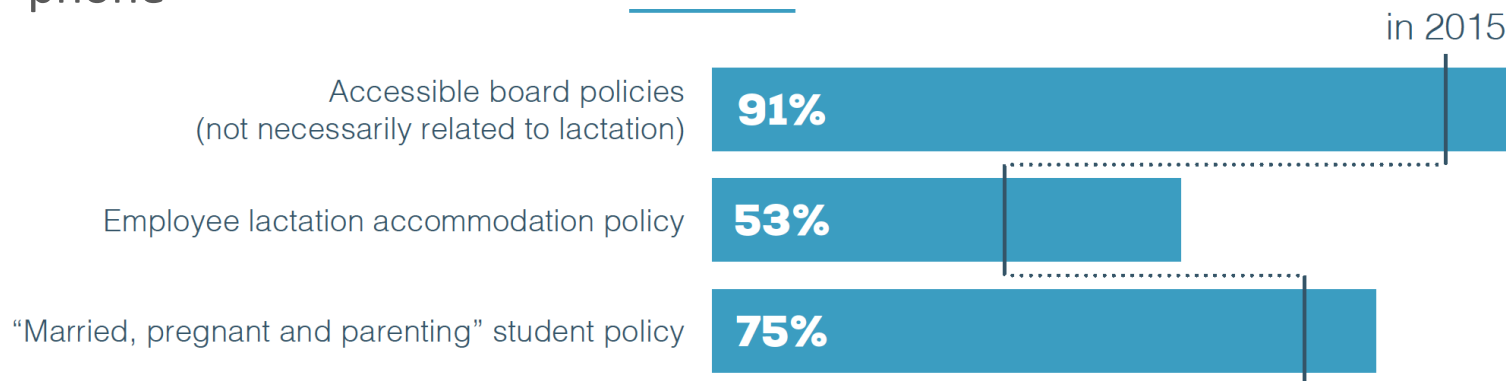


ABC's of Breastfeeding: Findings



Report Card Results for LA County School Districts: 2016 Improvements

- 48% of school districts **improved** in at least one evaluated area over 2015
- LA County **average grade "C"**
- 8 schools districts received a **"A" grade**
- The majority of school districts have **accessible** board policies (91%)
- 53% have lactation accommodation policies for **employees**
- **75% have a married, pregnant and parenting student policy**
- **51% have a Title IX Coordinator** identified on the website or by phone





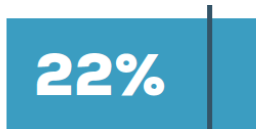
ABC's of Breastfeeding: Findings



Opportunities for Improvement: LA County School Districts

- **Only 22%** have lactation accommodation policies for **students**
- **35%** of school districts received a failing score of **“D”** or lower
- Much more progress to be made to reach the **goal of 100% compliance**

Student policy includes lactation accommodations



Title IX Coordinator identified on the website or by phone





ABC's of Breastfeeding: Findings



Report Card Results from 2016-2017 for LA Universities and Colleges:

- Most schools have **accessible policies online (94%)**
- **61%** of LA's universities and colleges have a **Title IX Coordinator** identified on the website or by phone



ABC's of Breastfeeding: Findings



Opportunities for Improvement: LA Universities and Colleges

- Only one school earned an A grade.
- A staggering 87% of the universities and colleges had a **failing grade of D or lower**.
- Most schools did not have an employee lactation accommodation policy (**84%**).
- **93%** of the schools did not have a **pregnant/parenting policy**.
- **98%** of the school's student policies did not have **lactation accommodation policies**.



ABC's of Breastfeeding: Four Recommendations



There are **four** simple steps that will aid the effective implementation of lactation accommodations:

1. Adopt Policy
2. Train Staff and Communicate Policy
3. Identify Staff
4. Provide Space and Time to Pump

+ Step 1: Adopt Policies

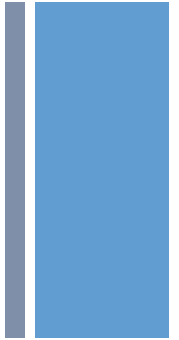
Adopt affirmative policies that support breastfeeding women and their specific lactation accommodation needs



- Make sure to have **two** lactation accommodations policies: one for employees and one for students
- If you don't have a policy, adopt one right away; if you do have one, review it for compliance and best practices
- CSBA has a new model lactation accommodations policy for students (5146).
- New model lactation accommodations policy for employees <http://breastfeedla.org>
- Contact BreastfeedLA, ACLU SoCal or CWLC for FREE assistance



Step 2: Train Staff and Communicate Policies



Give staff appropriate training to implement, evaluate, and monitor compliance. Inform employees, parents, and students of their rights under these policies

- Convey non-discrimination and lactation accommodations policies through **multiple channels** to **both students (and their parents!) and staff**
- Provide policies to all new hires, people who take leave
- **Post** information in employee/student handbook, website/Intranet, break rooms, office, the more the better
- Provide **trainings** to school administrators

+ Step 3: Identify Staff

Identify staff who will be responsible for implementing these policies and handling complaints:

- **Designate** at least **one employee** as the Title IX Coordinator right away
- **Share** the Title IX Coordinator's name and contact information in an easily searchable location on website and with the rest of the office staff
- **Designate** at least one **HR employee** for handling lactation accommodations for employees right away
- Consider creating a **dedicated webpage** with all relevant contact information, links to policies and a commitment to implement Title IX



Step 4: Provide Space and Time to Pump

Identify appropriate space and allow time for staff and students to pump, without any penalty

- Dedicate a permanent space for milk expression
- The space must be private, clean and secure and **MUST NOT** be a bathroom
- Provide time to express milk without penalty to employees and students
- Provide students and employees information on how to access pumps through WIC or health insurance plans





Private Time/Space Requirements



Designated space to express milk - Requirements:

- MUST NOT be a bathroom
- In close proximity to the employee's work area
- Private room that is free from intrusion
- Each time there is a need to express milk

Best practices:

- Electrical outlet
- Chair to sit and surface area to place pump
- Nearby sink with running water (for cleanup)
- Nearby refrigerator for storage
- Clean, quiet and well-lit



Private Time/Space Requirements



Time to express milk - Requirements:

- Reasonable amount of break time as frequently as needed for all nursing mothers (frequency and duration of milk expression may vary)
- For students: break time without incurring academic penalty and with the ability to make up any missed work

Best practices:

- Provide a teacher's aide if an employee is away from the classroom to express milk

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Private Time/Space Requirements

Restrooms = Impermissible
place to express milk

Private space with the essentials
= Permissible space to express
milk



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Implementation: For Providers & Advocates



- Breastfeeding benefits the workplace and school performance with less absenteeism and improved performance and morale
- When school districts:
 - 1) adopt strong lactation accommodations policies
 - 2) identify a Title IX Coordinator
 - 3) train staff and communicate policy
 - 4) provide access to time, space and breast pumps...
...they support families to continue breastfeeding for the mutual benefit of parent and child, the community and moreover, our society
- <http://breastfeedla.org/at-work/>





Next Steps



- BreastfeedLA, CWLC and ACLU SoCal and continue to offer technical assistance to schools to improve lactation accommodations and policy.
- Working on a new report to review lactation accommodations and policies at Colleges and Universities in Los Angeles. (To Be Released August 2017)
- Breastfeeding Advocacy 101 Day – August 31st at the California Endowment

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Lactating Employees

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Federal Laws Protecting Breastfeeding Employees



- Title VII
- Title IX
- Family Medical Leave Act (FMLA)
and
- Affordable Care Act (ACA)



Federal Law



- **Title VII of the Civil Rights Act of 1964**
- The Pregnancy Discrimination Act of 1978 amended Title VII to include pregnancy, childbirth and related conditions
- Covers employers with 15 or more employees
- Applies to private companies, employment agencies, labor organizations and government employees
- States that “women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment related purposes”



Federal law



- **Title IX of the Education Amendments of 1972**
- No federally funded educational program or activity can discriminate against a person based on their sex
- Applies to employees at colleges, universities, elementary and secondary schools as well as any other educational institution that receives federal funding
- Guidance issued by OCR confirms that Title IX applies to pregnancy, childbirth and related conditions (such as breastfeeding) because they are related to a person's sex



Federal Law



- **Family Medical Leave Act (FMLA) of 1993**
- Gives employees the ability to take time off from work to care for a family member with job protection
- FMLA is unpaid unless the employee has additional benefits through their job or state laws that provided paid leave
- Qualifying employer, employee must have met certain conditions
- Qualifying conditions
- Entitled to up to 12 unpaid work weeks in a 12 month period
- Can take FMLA all at once or intermittently



Federal Law



- The Breastfeeding Promotion Act – part of the Affordable Care Act (ACA)
- Requires employers to provide reasonable break time for nursing mothers for up to one year after the child's birth
- Break time is unpaid unless the employee uses a break that is normally a paid break to express milk -- if so, must be paid
- A private space shielded from coworkers and the public that is not a bathroom
- Some circumstances where an employer can refuse to accommodate an employee
- No retaliation



State Law Related to Lactating Employees

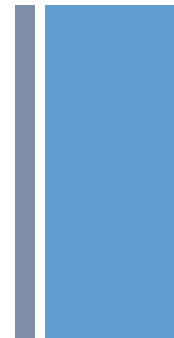


- **Labor Code Sections 1030-1033**
- All employers are required to provide “reasonable” break time to employees who need to express milk
- Break times should be as close to regularly scheduled breaks as possible
 - Any additional break time needed is unpaid
- Must provide a private space close to the employee’s regular work space that is not a bathroom
 - Employee can use his/her regular workspace if it fits the other requirements of the law
- Exception: Employer is not required to provide break time if it would “seriously disrupt” the operations of the employer



California State Law

- **California Fair Employment and Housing Act (Gov. Code § 12925 et seq)**
- Applies to employers with 5 or more employees
- Unlawful to engage in specified discriminatory practices in employment accommodations on the basis of sex
- Was amended in 2012 to clarify that “sex” includes breastfeeding or medical conditions related to breastfeeding.
- This means the penalties for discrimination on the basis of sex under the Act now apply to discrimination on the basis of breastfeeding
- Discrimination includes failure to reasonably accommodate based on pregnancy or lactation
- Discrimination also includes harassment based on pregnancy or lactation (and harassment rules apply to ALL employers)





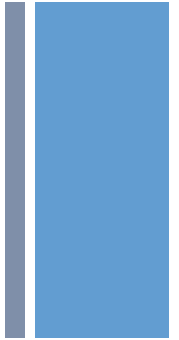
Using Leave for Breastfeeding – State



- Government Code § 12945
 - Up to 12 weeks of leave to bond
 - Regardless of whether breastfeeding
 - Up to four months of pregnancy disability leave
- An employee's right to leave depends on
 - How long they have worked for employer
 - How many employees the employer has
 - How many hours employee has worked in the last year
- Both types of leave may be taken together if situation warrants
- Pregnancy disability leave is only available to women who have been disabled by pregnancy. Lactation is not a disabling condition



State Law Penalties for Violations



- Labor Code § 1033
 - Failing to provide a lactation break
 - Each violation has a penalty of \$100
- Discrimination
 - Compensatory damages, money for lost wages, unpaid wages, medical costs
 - Punitive damages
 - Legal expenses

+ How to Handle Violations



- Resolve the dispute with your employer
- File a complaint with an administrative agency
- File a civil lawsuit

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QUESTIONS?

